239775

Chief of Naval Operations (N45)
Crystal Plaza 5
2211 South Clark Place
Arlington, VA 22244-5108

USCG-2001-8661-32

Telecopy Cover Sheet

From: STEVE EVANS Phone: 703 602 2562
Fax: (703) 602-4642 Internet: steve.evans@navy.mil

To: PAT CHESLEY Code: 202 Fax: 493-2251

No. of pages (including Cover Sheet): 12

Comments:
Docket ID 8661

239775

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO
5090
Ser N452/3U574650
APR 08 2003

From: Chief of Naval Operations (N452)
To: Chief, Docket Management Facility, U.S. Department of Transportation

Subj: VESSEL AND FACILITY RESPONSE PLANS FOR OIL: 2003

Encl: (1) Comments to the Coast Guard on Proposed Rule for Vessel and Facility Response Plans for Oil: 2003 (Coast Guard Docket # USCG-2001-8661) - 32

1. Enclosure (1) provides Navy's comments to Coast Guard's proposed changes to requirements for oil spill removal equipment under vessel and marine transportation-related facility response plans.

2. My point of contact for all vessel and facility response plan issues is Mr. Steve Evans, 703-602-2562, email: steve.evans@navy.mil.

Louis Maiuri

LOUIS F. MAIURI
Head, Afloat Environmental
Readiness Branch, Environmental
Readiness Division

4/7/2003

Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions Proposed Rule Coast Guard Docket # USCG-2001-8661

4/7/2003

1. Comments to Coast Guard

1.1 Specifically Identify a Threshold Volume of Persistent Oils to Trigger Dispersant Planning Requirements

Proposed Requirement. Proposed 33 CFR Sections 154.1045 (and 155.1050) require facilities (and vessels) that handle, store, or transport persistent petroleum oils (Groups II through IV), in areas where pre-authorization or expedited approval for dispersant use exists, to ensure the availability of response resources capable of conducting dispersant operations.

As proposed, the regulation appears to require that facilities that handle or store even small amounts of lubricating and/or hydraulic oils in combination with non-persistent oils, to comply with the dispersant planning requirement.

Comment. The regulation should include a minimum threshold volume of persistent oil transferred, (or transfer capability) to trigger the dispersant planning requirements.

Discussion. Proposed section 154.1045 would require facilities to plan for dispersant use without regard for the volume of persistent oils that vessels the facility serves are capable of accepting or typically accept in a transfer operation. Presumably this planning requirement, as proposed, would apply to any facility that handles any amount of persistent oil in bulk, and meets the general applicability threshold of 33 CFR 154.100(a), which captures any facility serving vessels capable of carrying 250 barrels of the combination of all bulk products carried.

The proposed regulatory wording does not differentiate between facilities that handle large quantities of persistent oils and those that handle small quantities of persistent oils plus large quantities of non-persistent oil. For example, many modern ships consume significant quantities of non-persistent distillate fuel and also use smaller amounts of lubricating and/or hydraulic oils. As written any marine transfer facility that handles any lubricating or hydraulic oils in bulk would probably be captured under the current wording regardless of the amount of persistent oils handled.

We would prefer to have the general applicability threshold of 33 CFR 154.100(a) address the maximum amount of persistent oil actually transferred to a ship at a given facility, rather than the theoretical capacity of each ship served. When the persistent oils handled are lubricating and hydraulic oils that support vessel operation (rather than oils transported as fuel or cargo), the amounts transferred for maintenance and replenishment are always much smaller than the total tank capacity of the vessel.

The potential for inappropriately capturing facilities for dispersant planning could be avoided by modifying section 154.1045 to include a minimum applicability threshold for persistent oils and modifying section 154.100(a) to address maximum amounts of persistent oils transferred at any one time vice theoretical ship tank capacity.

Recommendation. Base the facility response plan requirement for dispersant operations capability on operations that transfer 100 barrels

of persistent oil, rather than on the current applicability threshold that counts the combination of all bulk products carried, combining both persistent and non-persistent oils, and the total tank capacity of all oil products aboard the vessel.

1.2 Applicability of Dispersant Planning Requirements is Unclear Since Pre-Authorization Zones Have Not Been Defined

Proposed Requirement. Proposed 33 CFR Sections 154.1045 (and 155.1050) require facilities (and vessels) that handle, store, or transport persistent petroleum oils (Groups II through IV), in areas where pre-authorization or expedited approval for dispersant use exists, to ensure the availability of response resources capable of conducting dispersant operations.

Comment. Determination of dispersant pre-authorization and expedited approval zones will establish the applicability of this regulation and should also receive public comment.

Discussion. Since Regional Response Teams have not finalized their pre-authorization zones, it is impossible to determine the applicability of the regulations to our facilities. In addition, it appears that the "pre-authorization zones and the expedited approval process" can be moving targets. Facilities could become subject to the regulations by Regional Response Team policy.

As a minimum, a notification procedure should be in place, including opportunity to comment, and sufficient grace period to update facility and vessel response preparations. This might best be accomplished by making the designation of waters where pre-authorization or expedited approval for dispersant use exists subject to the rulemaking process.

Recommendation. We recommend that the pre-authorization zones and expedited approval zones be specified in this rule and that any changes become part of the rulemaking process. Additionally, a grace period should be provided to allow time for updating the plan and associated response preparations, after a pre-authorization or expedited approval zone is established. Ideally the response plan should not need to be updated until the next scheduled annual review required by 33 CFR 154.1065(a).

1.3 Language Consistency Between Regulations and Proposed Dispersant Use Zone Approvals.

Proposed Requirement. The proposed regulation requires dispersant planning both in areas that receive pre-authorization and in areas designated for "expedited approval." Proposed definitions are provided for "pre-authorization for dispersant use" and "quick or expedited approval for dispersant use."

Comment. Due to inconsistencies in language or usage between the proposed regulation and "pre-approval" documents, the proposed regulation imposes unnecessary dispersant operation planning requirements at locations that are not expected to use dispersants under any reasonable scenario.

Discussion. As proposed, 33 CFR 154.1045 requires that "the owner or operator of a facility that handles Groups II through IV petroleum oils within the inland, near shore, or offshore area where pre-authorization or expedited approval for dispersant use exists must identify in their response plan, and ensure the availability of, through contract or other approved means, response resources are capable of conducting dispersant operations within those areas." As currently defined "quick or expedited approval for dispersant" use means an arrangement that limits the information the Federal On-Scene Coordinator must provide in order to obtain concurrence from a limited number of agencies, generally associated with a limited time in which a decision must be reached."

In some cases Coast Guard documents that define proposed dispersant use zones have referred to a "quick approval process" for all waters in their jurisdiction that are not already designated as pre-approved for dispersant use. We believe this will lead to overly broad application of dispersant planning efforts in areas where actual use of dispersants is inappropriate or infeasible due to environmental concerns. For example, in California, proposed dispersant use zones for the Eleventh Coast Guard District designate some areas as "Pre-Approval," others and "Pre-Approval with Consultation," and would then designate all remaining waters within the area of responsibility as remaining under the current "Quick Approval Process." This language would presumably capture every facility that handles bulk persistent oils within the area of responsibility even if the facility is located in a confined shallow harbor where dispersant use would not be reasonably expected.

We believe it would be better regulatory policy to require dispersant planning only in areas designated as "pre-approved" or "pre-approved with consultation" for use of dispersants. That is, areas where an affirmative determination has been made that dispersants are appropriate in at least some potential spill scenarios. Areas designated for quick approval should not require dispersant planning. The intent in this choice of language should be that dispersant planning only be required in each area where its potential use has specifically been considered and where approval would be expected provided that suitable weather or other relevant site-specific conditions exist at the time of the spill.

Recommendation. We recommend the Coast Guard require dispersant planning only in areas actually pre-approved for dispersant use or pre-approved with consultation, and not in areas only designated for quick approval of dispersant use.

1.4 Aerial Spill Observation Requirements Should Allow for Development of Un-manned Technologies

Proposed Requirement. Proposed 33 CFR sections 154.1045(k) (facilities) and 155.1050(n) (vessels) require aerial oil tracking capabilities, including "sufficient numbers of aircraft, pilots, and trained observation personnel."

Comment. The requirement for aerial oil tracking capabilities should be structured to allow development and use of emerging technologies such as satellite surveillance or use of unmanned aerial vehicles.

Discussion. The Navy concurs with Coast Guard's proposal to include aerial spill tracking in the spill response planning requirements. However, we are concerned that the current language in the rule is unduly prescriptive in requiring manned aerial surveillance to perform the tracking function. As written the rule will discourage the development of alternative technologies and approaches that could perform the aerial tracking function better at a lower cost. Possible alternatives could include the use of sensor and camera equipped unmanned aerial vehicles, or satellite surveillance using technologies such as synthetic aperture radar.

Recommendation. The Coast Guard should craft regulatory provisions that will allow the adoption of new technologies, once they have been satisfactorily demonstrated. Address the aerial tracking function as follows for facilities, (with similar wording for the sections addressing vessel response plans):

Section 154.1045
(k) … Aerial oil tracking resources must -
(1) Be capable of arriving …
(2) Be capable of supporting …
(3) Either use manned aircraft surveillance and observers, or alternative technologies or combinations capable of satisfying the needs identified in this section, and approved by the Coast Guard per (K) (4) of this section. If manned aircraft surveillance and observers are used, capabilities shall include the following:
(i) Appropriately located aircraft and personnel capable of meeting the response time requirement …
(ii) Sufficient numbers of aircraft, pilots, and trained observation personnel to support oil spill operations … Observation personnel must be trained in -
(A) The protocols of oil spill reporting and assessment, including estimation of slick size, thickness, and quantity; and
(B) The use of assessment techniques …
(4) The Commandant, cognizant District Commander, or the cognizant Captain of the Port may approve on a response-plan-specific basis, the use of alternative technologies and approaches for monitoring and tracking of oil spills.

References. Web site for Tromso Satellite Station
http://www.tss.no/tssweb/services/#Satellite%20-%20a%20cost-effective

1.5 Distinguish Aerial Oil Tracking in Direct Support of Oil Recovery Operations from Aerial Observation to Assess Spill Environmental Impact

Proposed Requirement. Proposed 33 CFR Section 154.1045 (k) would require "sufficient numbers of aircraft, pilots and trained observation personnel" available per the response plan. Training for observation personnel would include protocols of oil spill reporting and assessment, use of assessment techniques, and familiarity with other guides, including NOAA's "Characteristic Coastal Habitats Guide."

Comment. Training requirements should distinguish between two distinct functions performed by aerial oil tracking, i.e., the function of

providing direct guidance and support to on-water recovery operations, vice the function of mapping and overall assessment of the spill and natural resources at risk.

Discussion. In Navy response operations, personnel from field response teams would be assigned tc aircraft operating in support of on-water recovery operations. These personnel are familiar with the area and the capabilities of the on-water recovery equipment, and are trained in estimating slick size and thickness. We believe any additional training needed to support this function could be provided with minimal impact to the Navy.

However, the proposed rule requires that all observation personnel be trained in other guides such as NOAA's "Characteristic Coastal Habitats Guide." This training is directed to meeting the second function of mapping and overall assessment of the spill and resources at risk. NOAA information places the second function (of clean-up assessment) within their administrative structure as part of the Environmental Unit of the Incident Command. The Federal On-Scene Coordinator or the Operations Section Chief usually assigns this duty. This is specialized training and the Unified Command must recognize the personnel that are assigned as competent. NOAA has been training the USCG Strike Team personnel in this function and looking towards training State OSPR biologists. We believe that it unnecessary to train all of our observation personnel to this higher standard and that it would significantly increase the burden of the required training. A small number of personnel could be trained to the higher level.

Recommendation. It is recommended that the training requirements for observation personnel be divided into two categories: spotting for the on-water recovery operations, and spill assessment and mapping responsibilities.

Personal spotting for on-water recovery operations would need to understand estimating spill size, thickness and quantity and they should also be knowledgeable in the use, capabilities and the limitations of the on-water recovery equipment that they are supporting.

Personnel performing mapping and overall assessment of the spill, coastal habitats and resources at risk, and similar needs should have specialized training that addresses that function.

1.6 Applicability of Dispersant Planning Requirements Should be Based on Risk Assessment

Proposed Requirement. Proposed 33 CFR Sections 154.1045 (and 155.1050) require facilities (and vessels) that handle, store, or transport persistent petroleum oils (Groups II through IV), in areas where pre-authorization or expedited approval for dispersant use exists, to ensure the availability of response resources capable of conducting dispersant operations.

Comment. The requirement to have dispersants, as well as quantity of necessary stockpiles, should be based on risk assessment.

Discussion. Determination of requirement for dispersant capability is based on a facility operating within a dispersant pre-authorization or expedited approval zone. As current pre-authorization zones are almost exclusively for offshore waters, it is assumed that this requirement is intended to include those facilities that are in close proximity to offshore waters where a pre-authorization or expedited approval exists or within the same COTP zone where these zones exist. If so, then this requirement may include facilities that do not have a likelihood of having spills that reach the pre-authorization or expedited approval zone. Facilities that are located within the COTP zone, but are situated such that, due to predominant weather, tides, or other reason, any spill from such a facility would not likely reach the area where the pre-authorization or expedited approval exists should be excluded from the requirement. The onus for proving the facts for such an exemption should be on the owner/operator, but the regulations should allow for such option.

Additionally, required dispersant stockpile amounts should also be based on risk assessment. For facilities that are located some distance from waters where the pre-authorization or expedited approval exists, it may be expected that only some percentage of the worst-case discharge volume would impact these waters. Similar to quantity reductions based on evaporation rates, the option to have reduced stockpile amounts should be available. This reduced quantity should be determined through trajectory analysis or other quantitative means and the onus of proving the facts for such an exemption should be placed on the owner/operator.

Recommendation. We recommend that the regulations include provisions for exemptions for those facilities that, as shown through quantitative risk analysis, are not likely to have spills where product reaches waters where the pre-authorization or expedited approval exists. Additionally, the regulations should include provisions for reductions in dispersant stockpile amounts if it can be shown, through quantitative risk analysis, that a reduced percentage of the worst-case discharge volume would reach waters where the pre-authorization or expedited approval exists.

1.7 Implementation Timeframes for Dispersant Capabilities should be Addressed

Proposed Requirement. Proposed 33 CFR Sections 154.1045 (and 155.1050) require facilities (and vessels) that handle, store, or transport persistent petroleum oils (Groups II through IV), in areas where pre-authorization or expedited approval for dispersant use exists, to ensure the availability of response resources capable of conducting dispersant operations.

Comment. As proposed, the regulations do not discuss schedule requirements for response plan revisions or implementation of changes (stockpiles in place). These provisions should be included and available for comment.

Discussion. The preamble (67 FR 63335) indicates that plan holders would have 8 months from the publication of the final rule to come into compliance with dispersant requirements. This requirement was not found in the proposed regulation.

Navy budgeting process requires facilities to program two years in advance of receiving executable funds. In many cases it is expected that Navy will contract for assets through OSROs or by use of BOAs. Since these requirements will likely necessitate large capital outlay, the availability of these assets in all areas where the Navy operates is in question. Should the Navy determine that the best alternative for compliance is to procure assets, acquisition funds will need to be programmed into future budgets. Even if Navy were able to contract for services in all areas, Operation and Maintenance funds would be needed to support contracts and are subject to the same budget planning process.

Additionally, as proposed, the regulations are based on RRTs and Area Committees determining pre-authorization and expedited approval zones. If, after the original regulations are published, new pre-authorization and expedited approval zones are established, Navy will require advanced planning for compliance. Implementation timeframes for changes in pre-authorization or expedited approval zones is not addressed.

The preamble (67 FR 63335) also indicates that plan holders would have 8 months from the publication of the final rule to come into compliance with regard to in-situ burning. As there is no compliance requirement for in-situ burning, the purpose of this deadline is unclear. Additionally, this deadline was not found in the actual proposed regulation.

Recommendation. We recommend that the USCG propose implementation schedules in the regulation and provide opportunity for comment. These schedules should consider the potential limited availability of assets in areas of lower density of response capabilities.

1.8 Implementation Timeframes for Aerial Tracking Capabilities should be Addressed

Proposed Requirement. Proposed 33 CFR Sections 154.1045 (k) (and 155.1050 (n)) require facilities (and vessels) that handle, store, or transport petroleum oils (Groups I through IV) to ensure the availability of response resources necessary to provide aerial oil tracking to support spill assessment and cleanup activities.

Comment. As proposed, the regulations do not discuss schedule requirements for response plan revisions or implementation of changes (securing resources). These provisions should be included and available for comment.

Discussion. No discussion of the timetable for implementation of this requirement or modification of response plans was found in the preamble or the proposed regulation.

Navy budgeting process requires facilities to program two years in advance of receiving executable funds. This requirement will likely require both the procurement of assets and the training of personnel. In both cases it is expected that Navy will contract for assets through OSROs or by use of BOAs, however, the availability of these assets in all areas where the Navy operates is in question. Should the Navy determine that the best alternative for compliance is to use its own assets, acquisition funds will need to be programmed into future budgets. Even if Navy were able to contract for services in all areas,

Operation and Maintenance funds would be needed to support contracts and are subject to the same budget planning process.

Additionally, as proposed, the regulations are based on RRTs and Area Committees determining pre-authorization and expedited approval zones. If, after the original regulations are published, new pre-authorization and expedited approval zones are established, Navy will require advanced planning for compliance. Implementation timeframes for changes in pre-authorization or expedited approval zones is not addressed.

The preamble (67 FR 63335) also indicates that plan holders would have 8 months from the publication of the final rule to come into compliance with regard to in-situ burning. As there is no compliance requirement for in-situ burning, the purpose of this deadline is unclear. Additionally, this deadline was not found in the actual proposed regulation.

Recommendation. We recommend that the USCG propose implementation schedules in the regulation and provide opportunity for comment. These schedules should consider the potential limited availability of assets in areas of lower density of response capabilities.

1.9 Response Times for Aerial Tracking Capabilities are Unreasonable

Proposed Requirement. Proposed 33 CFR Sections 154.1045 (and 155.1035) require facilities (and vessels) that handle, store, or transport persistent petroleum oils (Groups II through IV), in areas where pre-authorization or expedited approval for dispersant use exists, to ensure the availability of response resources capable of providing aerial oil tracking to be at the scene of a discharge within three hours of initial notification.

Comment. As proposed, the response time in the regulations eliminate the possibility of using regional assets to support this requirement.

Discussion. The response time is based on a two-hour recall/preparation time and a one-hour flight time. Assuming the worst case, a response 50 miles offshore and aircraft transit speed of 90 knots (from Table 8, helicopter); a one-hour flight time provides a maximum overland distance of roughly 50 miles. This means that aircraft must be pre-positioned within a 50-mile radius of any potential spill site and that trained personnel must be capable of getting there within two hours. The number of aircraft and trained personnel necessary to meet this requirement places an undue burden on plan holders.

Aerial tracking, while potentially beneficial to all spills, is generally only used on spills that extend beyond piers and/or harbors. The Navy currently uses local assets to support small spills, but depends on regional assets for response to larger spills. As proposed, the regulations would eliminate the ability to use regional assets to support this requirement (Navy regions are similar to EPA regions or USCG Districts). Trained observers must be within driving distance and each facility would need its own trained observers and aircraft. As the majority of the Navy's spills (from all shore facilities worldwide) are 100 gallons or less (approx. 95%) and would not substantially benefit from aerial tracking, this requirement seems overly restrictive.

4/7/2003

Recommendation. Increase the response time for aerial tracking resources.